

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CARYL CHESSMAN,

Petitioner and Appellant,

vs.

WMLEY O. TEETS, Warden, California
State Prison, San Quentin, California,

Respondent and Appellee.

APPELLANT'S CLOSING BRIEF

Appeal from an Order of the United States District Court,
Northern District of California, Southern Division,
by the Hon. Louis E. Goodman, District Judge,
Discharging a Writ of Habeas Corpus
and Remanding Petitioner to the
Custody of Respondent.

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In Propria Persona

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MISCELLANEOUS

Brien, "Fourth Cumulative Supplement to Manual
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NOTE

As in Appellant's Opening Brief:

The Transcript of Record from the District Court
will be referred to as R. ---.

The Reporter's Transcript of the pre-trial proceedings
(pre-trial record) will be referred to as PTR. ---.

The Reporter's Transcript of the hearings (hearing
record) will be referred to as HR. ---.

The Reporter's and Clerk's Transcripts on appeal to
the California Supreme Court will be referred to as Rep.
. --- and Cl. Tr. ---.

The original exhibits before the District Court
will be referred to as Pet. Ex. --- and Resp. Ex. ---.

Unless otherwise indicated, emphasis has been added
to appellant.

FOR THE NINTH CIRCUIT

YL CHESSMAN,

Petitioner and Appellant,

vs.

No. 15092

LEY O. TEETS, Warden, California
te Prison, San Quentin, California,

Respondent and Appellee.

APPELLANT'S CLOSING BRIEF

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PRELIMINARY STATEMENT

A full reply to Appellee's (Respondent's) Brief will
made under Argument, below, with one important exception
quiring immediate notice.

Under Point I of his argument appellee warden, herein-
er called respondent, asserts:

"The trial [District] court has held hearings
and made findings on these issues [as ordered by
the Supreme Court in Chessman v. Teets, 350 U.S. 3].
Appellant does not object to the propriety of the
findings that there was no fraud or collusion by
the prosecutor, substitute reporter or the court,
or to the finding that the court reporter tran-
scribed the deceased reporter's notes with fair-
ness and competence." (Resp. Br. pp. 5-6.)

This statement is seriously misleading. It seemingly
calculated to convince this Court, in effect, that be-
se, so respondent claims, appellant does not challenge

District Court's findings as such, the appealed order
y be affirmed without further consideration.

But appellant's procedural attack upon the order is
en more fundamental than would be an attack upon the
ndings.

It is this:

Appellant was unable to prove his charges conclusively
cause the wrongful acts, conduct and rulings of the
strict Court prevented him from doing so. Such being
e case, the hearing itself was, and the findings based
on it are, neither binding upon appellant nor determina-
ve of the issues raised by the appeal. The hearing, in
ort, was one in name only; accordingly, it patently is not
e legal sufficiency of the findings but is the sufficiency
the hearing itself that is fatally defective. This
ct appellant made abundantly clear in his opening brief,
t respondent has either failed or refused to perceive it.

(A second, non-procedural but, constitutionally, equally
ndamental attack requiring a discharge from custody is
sed upon established and undisputed facts of record.
is attack deals with the procedure employed by the State
urts in procuring, settling and using the trial record
appeal and is presented first, under Points I and II,
st below; Points I-A and B, App. Op. Br.)

Respondent in his brief finds no fault with or error
appellant's "Statement of the Case and the Facts" as

and in the opening brief (pp. 2-11). However, to
justify his own highly selective and greatly truncated
version of the case and the facts, respondent asserts
fatorily:

"Since petitioner has not attacked the sufficiency of the findings of fact, no detailed summary of the evidence produced at the trial [hearing] will be made." (Resp. Br., Statement of Facts, p. 3.)

This claim that the facts need only be sketchily considered has been disposed of just above. It is not correct. All the facts set out in Appellant's Opening Brief are most essential to a proper determination of the case.

Because of the importance and complexity of the matters in issue, because eight years of litigation and generally thousands of pages of documents and court records involved, and because respondent has elected baldly to advance incompetent claims that take only a few lines to make but often require a page or more to refute, this answering (reply) brief necessarily will run more than 20 pages. Accordingly, as required by Rule 2(e), Rules of this Court, because of its greater length, leave is hereby respectfully sought to file it.

Appellant's answering argument follows.

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I APPELLANT WAS NOT PERMITTED TO ESTABLISH INADEQUACIES AND OMISSIONS IN THE DISPUTED REPORTER'S TRANSCRIPT, WAS NOT PERMITTED TO BE PRESENT OR REPRESENTED BY COUNSEL AT THE TIME OF ITS SETTLEMENT (OR AT ANY TIME), AND WAS NOT PERMITTED TO PRODUCE WITNESSES OR TO TEST THE ABILITY OF THE SUBSTITUTE REPORTER TO TRANSCRIBE THE DEAD REPORTER'S NOTES.

(App. Op. Br. pp. 15-19)

(Resp. Br. ???)

Respondent does not, and appellant believes cannot, challenge directly either the law or the facts set out under this point in Appellant's Opening Brief.

Rather, passing that law and those facts, respondent argues at length that the procedure used to prepare and settle the record has been adjudicated as constitutional, and not therefore be readjudicated, and that this contested procedure is not violative of either constitutional due process or equal protection of the law.

This argument will be answered under Point II, just below. Once examined, it will be seen to leave appellant's original contention, as presented under Points I-A and B in the opening brief, in full force. In fact, respondent's approach to the point serves to emphasize the validity of appellant's claim.

11 THE COURTS OF CALIFORNIA DENIED TO APPELLANT DUE PROCESS AND EQUAL PROTECTION OF THE LAW IN ORDERING PREPARED, SETTLING, AND ACCEPTING FOR USE ON APPEAL SUCH A REPORTER'S TRANSCRIPT OF THE TRIAL PROCEEDINGS, USED AS A BASIS FOR AFFIRMING THE DEATH AND OTHER JUDGMENTS, WITHOUT GIVING APPELLANT ANY OPPORTUNITY TO DEFEND AGAINST THAT TRANSCRIPT.

(App. Op. Br., Point I-B, pp. 19-25)

(Resp. Br., Point II, pp. 6-13)

Without regard for the facts and the law upon which this point is based, respondent interposes what he terms "answers" to appellant's contention. These will be considered and refuted in the order respondent has presented them.

A. THE QUESTION OF THE CONSTITUTIONALITY OF THE DISPUTED PROCEDURE USED TO PREPARE AND SETTLE THE RECORD MAY AND SHOULD BE DECIDED ON THIS APPEAL.

Respondent initially argues that "The constitutionality of the procedures used to settle the record has not been adjudicated," and that "Policy demands an end to this litigation." (Resp. Br. p. 7.)

First. "Policy," however, of whatever kind or variety, creates no demand for a wrongful, unjust or unconstitutional delay in litigation. Further, this litigation can be ended more effectively by squarely deciding the question on its merits than by refusing to decide it.

Second. Decisions in habeas corpus from State courts are not res judicata. (Brown v. Allen, 344 U.S. 443, 457,

; see Price v. Johnston, 334 U.S. 266, 291; dissenting opinion of Judge Stephens in Price v. Johnston, 161 F.2d .) Where the ends of justice will be served by a successive inquiry, 28 USC § 2244 specifically authorizes the judge or court to make such an inquiry, and the Supreme Court has expressly so held (Brown v. Allen, supra, 508).

Third. Chief Judge William Denman of this Court considered the point so important that, in granting the required certificate of probable cause to appeal, he denied virtually all of his strongly-worded opinion in support of the awarding of that certificate to consideration of the point, emphasizing he believed it did definitely present a justiciable jurisdictional question under the Fourteenth Amendment. (See R. 252-254.)

Fourth. As further evidence of the public importance of the question, on June 28, 1956, at the regular yearly conference of the judges of this circuit, 50 of 51 of the judges participating joined in a resolution authorizing a study of the Chessman case to produce recommendations that would prevent a similar development in Federal criminal cases and further urged legislation by Congress that would empower Federal judges to grant a new trial should the trial reporter die, become disabled, or his notes be lost or destroyed during criminal proceedings.

Fifth. The point has never been squarely decided by Federal courts on the merits and on all the facts.

is the first time all the State court records in the
have been before this Court, or, with the exception
the court below, before any Federal (or State) court.
More than Chessman v. Teets, 221 F.2d 276, 278, de-
s the question, it simply announces mistaken reasons
fragmented parts of it should not be decided.

Further, this decision was reversed by the Supreme
t on certiorari (Chessman v. Teets, 350 U.S. 3), and
akes tortured reasoning to say, as respondent unex-
edly does, that the Supreme Court "impliedly adjudi-
d [and rejected] this issue by ordering a hearing
ly on the question of fraud and collusion in the
lement of the record." The former point was and is
ssarily embraced in the latter.

Moreover, the instant petition for the writ, raising
points, was filed in the District Court only after
Supreme Court had denied certiorari to the California
reme Court (where an almost identical petition was
ught up for review, In re Chessman, Crim. 5632) "without
judice to an application for a writ of habeas corpus
an appropriate United States District Court." (Chessman
Teets, 348 U.S. 864.)

Hence, the Supreme Court has held that the point pre-
s a justiciable question, and respondent's unwarranted
lm--"Of course, the United States Supreme Court likewise
liedly approved the procedure used in prior decisions"--

absolutely not true, for this is the only prior decision re is. In all certiorari proceedings in the case prior that (i.e., Chessman v. California: 340 U.S. 840, 341 U.S. 929, 343 U.S. 915, and 346 U.S. 916), the Supreme Court refused to review, and it is well settled that such cases import no opinion on the merits. (Brown v. Allen, 344 U.S. 443, 490-491, 497, and cases cited.)

Respondent also says that "The question was expressly posed in the case of People v. Chessman, 35 Cal.2d 455," "The Supreme Court denied certiorari. (340 U.S. 840.)" This is no more than another of respondent's ill-considered representations.

Chessman v. California, 340 U.S. 840, was not a certiorari proceeding seeking review of People v. Chessman, 35 Cal.2d 455. Rather, review was sought of a petition for writ of habeas corpus filed as an aid of appellate jurisdiction and summarily denied by the California Supreme Court (In re Chessman, Crim. 5110). Since appellant then had not exhausted his state remedies and the review sought was premature, the Supreme Court could not then reach the merits on certiorari had it wanted to. (USC § 2254.)

B. THIS INVENTED AND MAKESHIFT PROCEDURE
DENIED APPELLANT DUE PROCESS AND EQUAL
PROTECTION OF THE LAW.

Respondent next argues that "The procedures used by

State did not deny appellant due process or equal protection of the law." (Resp. Br. p. 7.)

In support of his claim, after fatally conceding that "appellate procedures must not be discriminatory," respondent declares that "The procedure for the settlement of a record where a court reporter dies before transcribing his notes was set out in People v. Chessman, 35 Cal.2d 455. It was and is the law of California. This procedure was reasonable, and in no way discriminatory as to Chessman." (Emphasis respondent's.)

This is a badly ill-advised and completely incorrect statement. The procedure employed in preparing and settling the transcript positively was not the law of California. Yet, in accepting the transcript while denying appellant the opportunity at which he might test its validity and adequacy, the California Supreme Court conceded that the transcript was prepared in a situation for which the Rules on Appeal did not expressly [or even impliedly] provide" (p. 458 of 35 Cal.2d). It should be kept in mind that the trial judge directed its preparation, not by any known law or rule, since none existed, but by "human ingenuity," to conform to his own words of record. From beginning to end, the methods employed were ad hoc and makeshift.

What might happen should another court reporter die while transcribing his notes in a capital case in this state is anyone's guess. Certainly People v. Chessman,

al.2d 455, doesn't put the question at rest. Further, type of appeal to be accorded a condemned appellant fixed by the State Constitution and its Penal Code (see Op. Br. pp. 15-16) and the power to make implementing governing appeals is vested in the State's Judicial Council, not its Supreme Court (Const. of Calif., Art. VI, § 1247k).

Finally, respondent's argument seems to boil down to : because the State did produce, settle and use a record on appeal, rather than no record at all, appellant ask and due process and equal protection may demand no .

What respondent is necessarily saying, under the disputed facts of this case, is that it is all right to use a record by "human ingenuity," in contravention of established, controlling and settled State law; to delegate, not to some impartial party, but to the prosecutor, the unsupervised authority to select a substitute reporter to prepare such a record of the trial proceedings; to let the prosecutor select his own uncle-in-law, and keep the fact carefully concealed from the trial judge, the appellant and the reviewing court; to let the prosecutor let the substitute reporter consult on the transcription of court; to grant the substitute reporter unlimited authority to prepare the record; to let him talk to detectives--out of court, trial witnesses for the prosecution--

g these talks as a basis for preparing a transcription
their testimony, at the suggestion of the prosecutor,
keep this fact from the trial judge, the appellant,
the reviewing court; to let the substitute reporter
bare the transcript in rough draft form, the rough
ft never being seen by the trial court or appellant,
ough appellant formally had asked to be furnished a
y, and then, also out of court, to permit the prosecutor
"check" the draft before it was copied in final form;
let the prosecutor swear to the reviewing court that
ellant (representing himself and held at a State prison)
ld be produced in court when the record was settled and
er let the trial judge know of this sworn statement; to
the reporter more than three times the statutory fee
his work; to hold hearings on the settlement of the
ord with neither appellant nor counsel representing him
sent; to have appellant's motions to be present and
llenge the transcript and the ability of the substitute
orter to transcribe the dead reporter's notes denied by
reviewing court without prejudice and ignored by the
al court; in the absence of appellant to proceed to
e witnesses testify and settle the transcript; to have
trial judge "approve" such a record without testing the
petence of the substitute reporter to decipher the dead
orter's notes, although the trial judge knew the local
erior Court Reporters' Association officially had gone

record that other court reporters had examined the notes found them to be indecipherable in material part; to the this disputed record accepted by the reviewing court used as a basis for affirming death and other judgments, though it was not certified to be complete and correct required, but only correct to the best of the substitute reporter's ability; and to never allow appellant to stand against the use of that transcript or to establish, he claimed, that missing from it, or garbled in the transcription of it, were sections in which it should have affirmatively appeared that appellant had been convicted of violation of fundamental constitutional rights.

This, to say the least, is a singular definition of due process and equal protection of the law. (See cases cited, contra, App. Op. Br. pp. 20-24.)

As stated by the late Mr. Justice Jackson in a separate opinion in Brown v. Allen, 344 U.S. 443, at 546: "But I know of no way that we can have equal justice under law except we have some law." The use of "human ingenuity," by the prosecutor, whose avowed purpose was to see appellant executed, is certainly no substitute for law.

The Fourteenth Amendment does not permit a State to deny equal protection of its laws because such denial is wholesale. (See concurring opinion of Mr. Justice Blackmun in Snowden v. Hughes, 321 U.S. 1, 15-16.)

Contrary to respondent's claim, independent research

a study of the texts and other references cited by respondent does not disclose a single instance where, in each case, the record has been prepared by the unique disputed means employed in this case. Moreover, we are dealing with a situation where an appeal is mandatory, rather than being merely discretionary or a matter of grace. Argument flowing from discarded methods of preparing appellate records under wholly dissimilar facts and is hardly persuasive or determinative of any issue presented here.

Here the relevant facts, all of record, are not in dispute, whatever interpretation or misinterpretation the District Court and respondent may have placed upon them, or whether both may have wed them to unrelated and disputed facts, and when such is the case "the appellate court is free to consider them and to reach its own conclusion unhampered by the District Court's findings and conclusions of law." (O'Brien, "Fourth Cumulative Supplement to Manual of Federal Appellate Procedure," p. 70, 3d Ed., 1948.)

Neither is this Court bound by decisions or findings of the State courts. Since the California Supreme Court is acting within its jurisdiction, whether as a matter of State law it decided the question of the validity and accuracy of the transcript correctly or incorrectly, its decision finally decides the question and defines appellant's rights under State law (Hebert v. Louisiana, 272

S. 312, 316.) But the Supreme Court (and Circuit Court) has constitutional power to inquire whether the state law, as construed and applied, has afforded appellant due process and equal protection of the law (Hebert Louisiana, supra; Buchalter v. New York, 319 U.S. 427, 9); and such an inquiry and decision cannot be foreclosed by the prior finding of the State court; the Federal Court will independently examine the facts and reach its conclusion (Norris v. Alabama, 294 U.S. 587, 590; Owen & Allison Co. v. Evatt, 324 U.S. 652, 659; Niemotko Maryland, 340 U.S. 268, 271).

As decisively held by the Supreme Court in the recent case of Reece v. Georgia, 100 L.Ed.(Adv.Ops.) 109, 112:

"We have jurisdiction to consider all the substantial federal questions determined in the earlier stages of the litigation (citation), and our right to re-examine such questions is not affected by a ruling that the first decision of the state court became the law of the case. (Citation.)"

C. THE RECORD AFFIRMATIVELY ESTABLISHES THAT APPELLANT HAS NOT WAIVED, BUT HAS VIGOROUSLY AND CONSISTENTLY ASSERTED, HIS RIGHT TO BE PRESENT (OR REPRESENTED BY COUNSEL) IN THE STATE TRIAL COURT AT THE TIME THE RECORD WAS SETTLED.

Respondent claims that "Any alleged denial of due process by virtue of the fact that appellant was not present at the settlement of the record in the State Court has been waived." (Resp. Br. p. 13.)

An examination of the facts appearing affirmatively

Record reveals conclusively that appellant did not
re his right to be present at the time the transcript
settled. On the contrary, he expressly sought to be
sent, and it will be shown that he had a clear consti-
tional right to be present and, at his option, to be
represented by counsel.

At the outset it may be conceded that if the disputed
transcript had been prepared in accordance with the rules
statutes governing appeals appellant would have had no
t personally to be present at the time of its settle-
ment. But it was not so prepared; the means employed were
unintended and wholly unknown to the law, as shown. If the
appellant could claim the right to so proceed, permitting the
transcript to be prepared under the direction of the pro-
secutor, and by his own uncle-in-law, it must concede
that appellant had the right, which was denied him, to test
the transcript's validity and adequacy.

Appellant could only have done so at the time of its
settlement (or at a subsequently ordered State court hear-
ing), for appellant's attempt in the California Supreme
Court to prohibit preparation had failed when the prose-
cutor had sworn to that court appellant would be present
personally allowed to participate in its settlement
before the superior court. Appellant then was representing
himself, and had the unquestioned right to do so (Carter
vs. Illinois, 329 U.S. 173, 174). He was being held at

Quentin and his motion to the State Supreme Court to
er his production at the settlement proceedings in the
erior court was denied without prejudice (doubtless
ause that court believed the superior court would order
ellant produced, since the prosecutor had sworn it would).

Appellant, however, was not produced; his motion to
present, question hostile witnesses, test the ability
the substitute reporter to transcribe the notes, chal-
ge the validity of the methods employed in preparing
transcript and establish prejudicial inaccuracies and
ssions in that transcript was simply ignored by the trial
ge, who proceeded to hold hearings, permit witnesses to
called and examined, settle the transcript, "approve"
and order it transmitted to the State Supreme Court --
in the absence of appellant or counsel acting in
ellant's behalf.

In deciding mesne proceedings then instituted by
ellant, the California Supreme Court, although placing
burden of proving the prejudicial inadequacy of the
quely prepared record on appellant, denied appellant's
ion for hearings in the superior court at which he might
just this, and without more accepted the transcript for
on appeal (People v. Chessman, 35 Cal.2d 455).

Since "Neither the historic conception of Due Process
the vitality it derives from progressive standards of
justice denies a person the right to defend himself,"

ther does it deny him the right to defend against
h a transcript. (Carter v. Illinois, supra, at 175.)

Where the accused is defending himself, the trial
ge must be particularly alert to see that the accused
not overreached and taken advantage of (Gibbs v. Burke,
U.S. 773, 781). But here, by not producing appellant
offering him counsel when the record was settled, the
al judge himself was the person responsible for appel-
t being overreached and taken advantage of.

The essential elements of due process of law are
ice and adequate opportunity to defend (Louisville, etc.,
Co. v. Schmidt, 177 U.S. 230, 236; Simon v. Craft, 182
. 427, 436). Yet appellant was never allowed to defend
inst the transcript, either in person or through counsel.

While the State Supreme Court offered to appoint
counsel for appellant to argue the mesne proceedings be-
e it, the superior court never offered appellant counsel
the time the record was settled, although appellant
er waived his right to counsel. He had no occasion to
so, since up until the time hearings on the settlement
en, appellant believed he would be produced and allowed
participate personally in those proceedings.

A waiver of counsel in a capital case is not compe-
t when it is involuntarily and negatively brought about
arbitrary, extrinsic causes. To be effective, "it must
intelligently, competently, understandingly and volun-

II APPELLANT WAS DENIED A FULL AND FAIR HEARING BY THE DISTRICT COURT.

A. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN REFUSING TO SUBPOENA OR ORDER THE DEPOSITIONS TAKEN OF WITNESSES WHOSE TESTIMONY WAS MATERIAL, COMPETENT AND RELEVANT; THIS ALTERNATIVE COURT PROCESS WAS FIRST SOUGHT LONG BEFORE, NOT AFTER, THE HEARINGS GOT UNDERWAY.

(App. Op. Br. pp. 24-26)

(Resp. Br., Point III-A, pp. 16-17)

If, as respondent says, "It should appear clear that District Court had no power to issue subpoenas for production of witnesses," then a more persuasive reason why the District Court should have allowed depositions to be taken could not be presented. But that court refused either to order the production (or, with one exception, even request the production) of witnesses whose testimony was vital, or to permit depositions to be taken.

The result was that appellant was foreclosed by any and every means from getting most of his evidence before the court. Respondent does not dispute appellant's showing in the opening brief but, rather, seeks to get around it with a gross misrepresentation of the facts.

Respondent would have this Court believe appellant waited until four days after the hearings had begun to seek depositions or have subpoenas issued, and that this was the only such attempt made. Actually, however, this

the next to last of repeated attempts to secure such alternative court process, as the record clearly shows. Before the hearings started appellant's counsel even considered the possibility of moving the place of hearing to Los Angeles, if no other way was open to secure vital testimonial evidence (PTR. 209 et seq.).

On January 9, 1956, appellant sought without success to secure the immediate production of relevant public records (R. 146-148). On that same date appellant filed "Petitioner's Witness List and Application for Court-ordered Issuance of subpoenas" (R. 151-153). This application was denied without prejudice (R. 157).

Even before that and on the first day the case was assigned to Judge Goodman, which was November 30, 1955, appellant's counsel took this matter up with the court. It was again taken up on December 30, 1955 (see PTR. 209-211), and the court stated: "I think there is some provision in the statute for bringing [in] witnesses from outside the district," but did not identify the provision. On January 9, 1956, appellant's counsel argued at length, but vainly, for the issuance of court-ordered subpoenas (PTR. 242-252).

Having made every effort prior to the hearings for process to produce his witnesses and failed, appellant filed his "Motion for Order for Issuance of Subpoenas and Process for the Taking of Depositions" on January 19,

6 (R. 167), with supporting affidavit (R. 160-166).
s motion, too, was denied (R. 215; HR. 511). Last,
January 24, 1956, appellant filed his motion for
claration of rights (R. 168-169), with supporting
exhibits (R. 170-197) and affidavits (R. 198-203), by
which he sought, among other things, to be able to pay
the costs of producing his witnesses (R. 201-202). The
application was summarily denied (HR. 916).

B. THE DISTRICT COURT KEPT APPELLANT FROM
PROVING HIS CHARGES.

(App. Op. Br. pp. 26-31)

(Resp. Br., Point III-B, pp. 17-20)

(1) Here respondent argues that black is white. The
record does show that the District Court did refuse to
permit the accuracy of the transcript as prepared by the
substitute reporter to be tested, and that the District
Court, further, did refuse to permit the all-important
question of the decipherability of the notes to be resolved.

Stanley Fraser, the substitute reporter, was the first
witness called (not counting various witnesses who brought
the records for identification). Almost at the outset
counsel for appellant's interrogation of Fraser, the
District Court told counsel flatly it was not going to
allow the accuracy of the transcript or the ability of
Fraser to transcribe the notes to be tested. The court,
in fact, was so bluntly emphatic that it went so far as to

te that it didn't intend to permit either, whether
Supreme Court had intended it to do so or not. The
strict Court added that Fraser "could have been the
t incompetent reporter in the world and he could have
e a mess of the transcript," and the "transcript could
75 percent wrong, and it wouldn't raise any federal
stion." (HR. 248-250.)

What could be clearer? How could appellant object
the exclusion of evidence when, at the outset, the
rt announced it wouldn't even allow the subject to be
sidered? Respondent's argument is incredible in the
nt of the record.

As well, the gratuitous speculation in Respondent's
ef as to why appellant did not have his expert witness
tify is refuted by the record. The reason this witness
not testify is very simple: appellant exhausted his
ls and credit before the hearings began, was thereafter
pelled to proceed in forma pauperis, and the expert
ained to testify unless he was paid in advance for his
ert testimony (R. 198, 201).

Equally gratuitous and unwarranted is the inference
ondent would have this Court draw from counsel for
ellant's statement regarding the many errors this ex-
t had found. These errors dealt largely with omissions
s shown against the transcript): that is, with places
the notes where whole sets of symbols, line after line

them, had been left untranscribed, or where words and sentences had been supplied in the transcript for wholly entered or missing notes, and rather than raising any presumption that the notes could be transcribed, they actively refute such a presumption (see R. 199-201).

It is true that "Petitioner did not avail himself [the] offer" of the District Court "to put the substitute court reporter in his chambers in order to permit to work on the transcription of a page of the original s." An examination of the circumstances leading up to this offer, as disclosed by the record, immediately reveals why: under the conditions imposed, the test would have proved or decided nothing. (See HR. 285-292.)

(2) Respondent misses the point entirely. He asserts: "[District Court] was correct in ruling that any misstatement made as to the place of the delivery of the transcript was immaterial."

The place of delivery, per se, may have been relatively unimportant; but the sworn misrepresentation by the prosecutor to the effect that appellant would have the transcript delivered to him in court at the time of settlement was crucially important. This false statement, made under oath to the California Supreme Court, resulted first in that court permitting preparation of the transcript to go ahead when appellant sought a writ of prohibition to halt preparation. It resulted, next, in

court denying without prejudice appellant's motion
an order requiring his production in the superior
t at the time the record was settled, since that court
been told under oath by the presecutor, an officer
he superior court, that the superior court would
duce appellant. But appellant wasn't produced; his
on to be produced was ignored by the trial judge, and
record was settled, with the prosecutor actively par-
pating in the proceedings, in the absence of appellant
nyone representing him. And the prosecutor never told
trial judge, then or ever, of this false statement.
as content, rather, to benefit by his own wrong.

Had the prosecutor either not made such a false
ement under oath, or had he told the trial judge of
the course of the proceedings and the end result un-
tedly would have been entirely different. The harm
by it and the prosecutor's significant silence with
ect to it was incalculable. Judicial sanction of
false swearing puts a premium upon trickery.

Respondent claims that the prosecutor "did answer
question [as to this affidavit] later in the proceed-
in the District Court. But all the prosecutor did
seek to excuse and minimize what he had done by claim-
he had been mistaken about what the rules required
(543), and appellant's counsel was not permitted to
ow through in the examination and show the grave preju-

suffered. Further, the District Court earlier had on occasion to comment that comments of the prosecutor at nothing because they were simply the statements by attorney in a case.

Yet here the prosecutor was far more than that. He the agent of the State - the person designated by the judge to find a reporter to undertake to transcribe dead reporter's notes - the individual who, acting in color of this authority, selected his own uncle-in-law - the one who negotiated the special contract with Board of Supervisors at three times the statutory fee for his uncle-in-law, who sought all the extensions of time for preparation his uncle-in-law claimed to need, directed the preparation, who checked the "rough draft" of the transcript, and who offered it to the trial court for filing, etc.

(3) What marvelous kind of Alice-in-Wonderland double-act is that which is found in the first paragraph on page 1 of Respondent's Brief? In the first place, it is not Plaintiff's contention, as respondent too nicely and contently claims, that the court refused to let him "offer" records into evidence, once they were in court, but that the court went far further and refused to order the production of these records and thus kept their contents from it and this Court on appeal. And how, in the name of heaven, may records be produced unless, when they are other-

unavailable, their production is ordered by the court? These hospital records and arrest reports (and police) were highly relevant to the issue of fraud and corruption in the case. This is so obvious that appellant is misled by respondent's claim to the contrary.

After the record had been settled and "approved" by trial court, the California Supreme Court subsequently, appellant's motion, ordered the prosecutor's opening press and the voir dire examination of prospective jurors added to the record before it. Fraser was engaged in preparing this portion of the record between July, 1950 and January, 1951. In his petition, among other times, appellant alleged Fraser had been arrested for drunkenness on October 21, 1950 (R. 11), which was while Fraser was supposedly actually engaged in preparing the record.

Appellant should have been allowed to question Fraser, produce records and establish this fact. Appellant, as , should have been allowed to call Mrs. Eva Hoffman establish that Fraser was excessively intoxicated while he was attempting to transcribe the notes, was arrested more than once during this period, etc. (R. 162).

Appellant, further, by the production of these records and by the questioning of Fraser, as well as by corroborative testimonial evidence, should have been allowed to prove Fraser had misrepresented his ability and was in a mentally and physically incompetent to transcribe

notes, as alleged (R. 10), because of his excessive of and long-standing and continued addiction to alcoholic beverages, with its inevitable brain damage, which terminated in 1953 in an attempt at suicide, hallucinations, severe delirium tremens, and lengthy hospitalization (see 150, 162-163, items 4 & 5).

C. THE DISTRICT COURT DENIED APPELLANT
ADEQUATE TIME AND OPPORTUNITY TO
PREPARE.

(App. Op. Br. pp. 31-35)

(Resp. Br., Point III-C, pp. 20-22)

Appellant's Opening Brief and the uncontradicted facts of record present a decisive answer to respondent's claim that "The court was most liberal in granting time to the petitioner in which to prepare for trial." In the first place, time without opportunity to prepare is meaningless (Adams v. U.S. ex rel. McCann, 317 U.S. 279), and the record shows without contradiction that the conditions under which appellant was obliged to prepare and consult with counsel at San Quentin were prohibitive. Such conditions were made the subject of affidavits submitted in support of various motions for relief, and are part of the record. Not one counter-affidavit was filed. To explain this failure on his part, respondent offers the excuse that "Most of these [pre-hearing] proceedings were conducted without notice and due to the shortness of time counter-

idavits were unable to be prepared."

There are four answers which conclusively repudiate s claim: (1) In each case respondent's counsel, being ved copies of all papers filed, were notified of, eared at and participated actively in the proceedings. a single pre-trial hearing was held in the absence respondent's counsel. (2) Respondent's counsel did once request a delay of any pre-trial hearing or ask time in which to file counter-affidavits. (3) The ord discloses that respondent did have ample time to e any counter-affidavits he desired. In one instance econd motion for a transfer of custody was put over a k (R. 85). (4) When respondent testified at his own uest (PTR. 149-176), he did not deny in any substantial ticular the facts alleged in the affidavits; on the trary, his stated purpose in testifying was to justify condemned actions, orders and treatment of appellant, to seek a change of custody for appellant (see respond-'s motion at conclusion of his testimony: R. 176).

Respondent does not and cannot dispute that, at the son prior to the hearings, all of appellant's legal pers were examined and their contents ascertained, or that ellant's person and effects were searched daily, often e than once, or that conversations between appellant his counsel were listened to, or that all the other egations relating to this matter were not correct.

Further, since respondent was never personally present during consultations between appellant, appellant's counsel and others, or when appellant was searched, his testimony was hearsay. Had he wanted to rebut appellant's affidavits, he was free to produce as witnesses his agents the guards but chose not to do so.

The District Court's offer to transfer appellant to Matraz may have been "unprecedented" but had appellant accepted it blindly he would have found himself in an impossible position. Respondent elects to ignore the affidavit of George Davis, appellant's counsel, showing it to be true. Further, appellant did accept the offer only asked that the conditions offered be spelled out, which the court refused to do. (See R. 123-124, 125, 128-129, 130-131, 132-139.)

Appellant did--and still does--want an early, fair and decisive hearing on these charges. When his counsel stated this on November 30, 1955, he naturally assumed he would be able to produce witnesses or take their depositions, have access to relevant public records, and have a reasonable opportunity to prepare. This didn't prove to be the conditions that obtained, however.

After noting that the petition originally was filed in December, 1954, respondent observes that the petition contains a statement that "said persons [i.e., witnesses in support of the charges] have stated that they are willing

testify to facts germane to this matter under oath
suant to subpoena." This is true but it certainly does
aid respondent, since it affirmatively appears under
division A of this point that appellant was never able
subpoena these witnesses, to take their depositions,
get vital records produced.

D. THE DISTRICT COURT POSSESSED THE STATU-
TORY AUTHORITY TO ORDER THE SHORTHAND
NOTES PHOTOSTATED AND FURNISHED APPEL-
LANT WITHOUT PREPAYMENT OF COSTS; ITS
REFUSAL TO DO SO HAMPERED APPELLANT IN
PROVING HIS CHARGES.

(App. Op. Br. pp. 46-27)

(Resp. Br., Point III-D, pp. 22-23)

Respondent's claim that 28 USC § 2250 was intended
apply only to records and documents "of the trial court
re the trial court was a federal court" is fantasy,
fact. It applies to precisely what it says it applies:
records and documents on file in the office of any Clerk
the United States.

The shorthand notes were on file with the District
Clerk. They were a crucial part of the record both
the State courts and in the District Court, and were
produced as exhibits at the first opportunity when the
hearings, which centered around them, began.

The notes were impounded on December 16. The hearings
were then scheduled to begin on January 9. Appellant's
counsel, as soon as they were available, immediately began

study them. They were available only at the clerk's
ce and when that office was open, which gave appel-
t's expert only some 15 days in which to work. Appel-
t had only a limited amount of funds. If he had paid
\$300 to \$400 required to have the notes photostated
ould have been unable to pay his expert. As it was,
funds were soon exhausted and he was compelled to
eed in forma pauperis.

Too, appellant was running out of time. His expert
not able to complete his study of the notes, around
h the entire proceeding centered, unless they were
lable at nights and on weekends (see PTR. 262-263).
llant in consequence immediately asked to have the
s photostated and furnished him without cost under
SC § 2250.

The District Court had unquestionable power under
section to order the notes photostated and furnished
llant without charge to him. It prejudicially abused
discretion in refusing to do so.

V THE DISTRICT COURT HAD BOTH THE POWER AND
DUTY TO REFUSE TO ALLOW J. MILLER LEAVY
TO APPEAR AS CO-COUNSEL FOR RESPONDENT;
IT SHOULD HAVE DONE SO.

(App. Op. Br. pp. 35-38)

(Resp. Br., Point IV, pp. 23-24)

Contrary to respondent's claim, J. Miller Leavy was
"the statutorily designated counsel for the warden."

Attorney General of the State was (Calif. Gov't Code, 511). When (under circumstances not applicable here) district attorney represents, or acts on behalf of, the warden of a State prison, it is always the district attorney of the county in which the prison is located (see, e.g., Calif. Pen. Code, §§ 1475, 3701-3702). San Quentin is in Alameda County. J. Miller Leavy is a deputy district attorney of Los Angeles County.

Respondent has not quoted all of Section 12550 of the California Government Code. That section further provides:

" . . . When he [the Attorney General] deems it advisable or necessary in the public interest, or when directed to do so by the Governor, he shall assist any district attorney in the discharge of his duties, and may, where he deems it necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect he has all the powers of a district attorney, including the power to issue or cause to be issued subpoenas or other process."

Thus, the section is not authority at all for the claim that the Attorney General has the mandatory power under State law to compel a district attorney or his deputy to assist him in representing a respondent warden in a habeas corpus proceeding. Rather, when applicable, the section commands the contrary: it is the district attorney who must assist the Attorney General.

The District Court had the clear power and duty to refuse to allow J. Miller Leavy to appear (under the facts

the case), and it is no answer to say it was all right
him to appear simply because he did not argue his own
imony or because his appearance was purportedly "not
ssarily a matter of choice with" him. Leavy obviously
ed to appear; if he didn't, he was free to have said
If he had, the court certainly would not have forced
to.

V THE DISTRICT COURT SHOULD HAVE GRANTED
APPELLANT'S MOTION TO MAKE THE STATE OF
CALIFORNIA A PARTY-RESPONDENT. APPELLANT
DID NOT CALL THE PROSECUTOR, THE SUBSTI-
TUTE REPORTER AND THE TRIAL JUDGE AS AD-
VERSE WITNESSES; HE WAS NOT ALLOWED TO.

(App. Op. Br. pp. 38-40)

(Resp. Br., Point V, pp. 25-26)

Respondent does not deny that both in fact and in
the State was and is the real party in interest in
a habeas corpus proceeding, but argues that to have
ated appellant's motion and hence to have made the
e's agents, in addition to the respondent, directly
erable to the court "would be a violation of the
enth Amendment of the United States Constitution."

Respondent is mistaken. The case he cites--Elliott
Endricks, 213 F.2d 922--expressly holds that a habeas
us proceeding is not a suit against the State. To
joined the State as a respondent, then, would not
made it a party to a suit in any accepted legal
nition of that word. It simply would have made it a

by to the proceeding, according judicial recognition
its actual real party in interest status.

When the writ proceeds against the warden he is not
sued by the petitioner; rather, the petitioner is
challenging the warden's right to detain him and may ask
more by way of relief than his release from illegal
custody. And while the writ does proceed against the
warden (because he is the custodian and has no right to
detain the petitioner in violation of petitioner's consti-
tutional rights), it seldom is the warden who is the State
official alleged to have deprived the petitioner of those
rights in the first place.

Specifically, in this case, if other State agents
named in the petition had not allegedly deprived appellant
of his constitutional rights, then appellant could not
have proceeded against the warden or maintained that the
warden, by detaining appellant for execution, was not
acting beyond his authority as a State officer.

Thus respondent's argument is a truly dubious one.
It boils down to this: A State's judicial agents and
attorneys may contrive to obtain and have upheld on appeal
a capital conviction in violation of fundamental constitu-
tional rights, and then be forever free from proper Federal
judicial intervention simply by having in advance transferred
the petitioner to the custody of a prison warden in another
Federal judicial district and then blandly maintain that

do not have to, and cannot be made to, answer
ctly as a party to any Federal court proceeding.
Such tenuous argument is one arising from convenience
er than conviction and merits being dismissed as such.
Respondent's concluding assertion that J. Miller
y, appellant's prosecutor in the State court, Stanley
er, the substitute reporter, and the Hon. Charles W.
ke, the trial judge, were called by appellant as adverse
esses is just not true, as the record shows, and appel-
could not impeach his own witnesses, so the point is
in any sense or to any degree hypothetical.

I RESPONDENT'S SEIZURE AND HOLDING OF APPEL-
LANT'S LITERARY PROPERTY AND HIS REFUSAL
TO PERMIT APPELLANT TO HONOR THE CONTRACT
ENTERED INTO BETWEEN HIMSELF AND HIS COUNSEL
WORKED TO PREVENT APPELLANT FROM PROVING
HIS CHARGES, DEPRIVED APPELLANT OF HIS
PROPERTY WITHOUT DUE PROCESS OF LAW, AND
DENIED APPELLANT THE EFFECTIVE ASSISTANCE
OF COUNSEL. THE DISTRICT COURT COMMITTED
REVERSIBLE ERROR IN REFUSING TO DECLARE
APPELLANT'S RIGHTS ON THESE SUBJECTS.

(App. Op. Br. pp. 40-46)

(Resp. Br., Point VII, pp. 28-29)

Respondent's argument in opposition to this point
ly has no merit. True, "Neither the [State] Director
Corrections nor the State of California were parties
the habeas corpus action." But neither were nor are
y indispensable nor even necessary parties to a con-
eation and decision by the District Court of appel-

's application for a declaration of his rights under USC §§ 2201 and 2202, as prayed for (R. 168-169).

It was the respondent warden who had seized appellant's property; he who held and who still holds it in possession; he who did and does refuse to release it. Likewise, it was and is he who refused to permit appellant to honor the contract entered into between appellant and counsel, George T. Davis. It is, moreover, not the reasons or motives for his acts that are challenged as depriving appellant of his rights under the Fourteenth Amendment, but the acts themselves. Hence it is apparent that the only necessary party was and is the respondent.

Further, the California Attorney General, counsel for respondent, is also, under State law (Calif. Gov't Code, § 511), counsel for the State and the Director. When the application for declaratory relief was called and denied in the District Court, this counsel stood by and said nothing on the subject of whom he considered proper parties, although he had every opportunity to do so. Having failed to make his objection in the District Court, he may not raise it here for the first time on appeal.

There are several conclusive answers to respondent's claim that "This question [of appellant's rights] should be determined in the State courts."

First. These questions have been adjudicated by the State's courts, including its highest court, and this fact

specifically alleged in the application for declaratory relief (R. 202). State remedies are exhausted.

The petition for habeas corpus in the Marin County Superior Court referred to by respondent was filed long before, not after, these proceedings were had in the District Court. It was denied, except that appellant was given the right to send a written assignment of his property rights in the manuscript of the unpublished novel by respondent, and the question of property rights itself was left undecided. In practical effect, no relief was granted (R. 186-188).

As well, the California Supreme Court later denied without opinion a petition for habeas corpus, seeking the same relief as was subsequently sought in the application for declaratory relief under 28 USC §§ 2201 and 2202 in the District Court (R. 174-193).

Appellant has no further available remedy in the State courts. He is civilly dead (Calif. Pen. Code, § 2602), and so is barred from instituting a civil suit in the courts of California.

Second. But there is no comparable provision for civil suits in Federal law. Appellant is resultantly free to seek in whatever relief to which he may be entitled under Federal law and the 14th Amendment in the Federal courts.

Third. What is ultimately in issue here is not alone a question of State law, or a non-federal determination

the validity of a State prison regulation. It is
whether the acts of respondent in seizing and holding
appellant's literary property and refusing to allow
appellant to honor the contract entered into between him
and his counsel operate to deprive appellant of his property
without due process of law and deny him the effective
assistance of counsel, clearly matters within the juris-
diction of the District Court. This was demonstrated in
the opening brief.

Fourth. Federal courts have both the clear power and
the duty to strike down State prison rules which, in their
application to a State prisoner seeking relief in the
federal courts, operate to deprive the prisoner of due
process or equal protection of the law. (Ex parte Hull,
349 U.S. 546.)

Appellant does have an enforceable legal right to
his literary property as well as an enforceable legal right
to honor the contract with his counsel. The cases cited
by respondent are not in point.

While appellant is civilly dead under State law, he
nevertheless retains the right to "mak[e] and acknowledg[e]
any sale or conveyance of property" (Calif. Pen. Code, §
2603). Further, in this State, "No conviction of a crime
operates as a forfeiture of any property . . ." (Calif. Pen.
Code, § 2604). And the Fourteenth Amendment commands that
no State shall deprive any citizen of his property without

process of law or deny him the right to the effective assistance of counsel.

II THE RECORD SHOWS, AS A MATTER OF LAW, A PERSONAL, CONTINUING AND FIXED BIAS ON THE PART OF JUDGE GOODMAN AGAINST APPELLANT AND IN FAVOR OF THE STATE OF CALIFORNIA.

A. THE AFFIDAVIT OF DISQUALIFICATION WAS SUFFICIENT.

(App. Op. Br. pp. 47-50)

(Resp. Br., Point Vi, pp. 26-28)

Respondent claims that "the district judge correctly held that the allegations of the affidavit were insufficient to show personal bias and prejudice." But a reading of the affidavit (R. 101-118) shows that it was based on far, far more than, as respondent claims, "a mere opinion of the judge on a matter of law and an adverse prior ruling." It was based on the angry and intemperate language of Judge Goodman's opinion in Chessman v. Teague, 128 F.Supp. 600, on the evident personal hostility evident therein, on the public hysteria that opinion produced; on the judge's repeated complaints that the case was before him; on his reference to his court as a laundry; on his unkept promises to change appellant's custody; on his refusal to grant appellant adequate time or opportunity to prepare and present his case, etc., as set out in the opening brief, and as fortified by his widely publicized attempts to have the habeas corpus law changed and shut

...ellant out of Federal court, his conduct of and com-
ts during the actual hearings, and his statement that
didn't care what the Supreme Court intended, he was
ng to proceed in his own way, etc.

In such a fact setting appellant again submits that
point should be controlled and tested by the stand-
s fixed by the Supreme Court in the cases of In re
Robinson, 349 U.S. 133, 136, and Berger v. United States,
U.S. 22.

Appellant has another case, Knapp v. Kinsey, 232 F.2d
, which he believes is squarely in point. There the
th Circuit stated and held (p. 466):

" . . . When the remarks of the judge during the
course of a trial, or his manner of handling the
trial, clearly indicate a hostility to one of the
parties, or an unwarranted prejudgment of the
merits of the case, or an alignment on the part
of the Court with one of the parties for the pur-
pose of furthering or supporting the contentions
of such party, the judge indicates, whether con-
sciously or not, a personal bias and prejudice
which renders invalid any resulting judgment in
favor of the party so favored. (Citations.) . . .

" . . . the conduct of the District Judge did not
conform to the standard required by the foregoing
authorities. Whether consciously or otherwise,
he failed from the start of the trial to view this
case with the impartiality between litigants that
the defendants were entitled to receive. His
active participation in the case and in the ques-
tioning of witnesses exceeded what was reasonably
necessary to obtain a clear understanding of what
their testimony was and fully justifies appellants'
complaint that at times 'he, figuratively speaking,
stepped down from the bench to assume the role of
advocate for the plaintiff.' Although appellees'
counsel did not ask or need such assistance, and

apparently at times realized the possible prejudice to their case, the prejudicial effect to appellants' rights requires a reversal of the judgment. (Citations.)"

judgment was reversed and the case remanded for re-
l before another judge. The interests of justice
for a like decision in this case.

B. THE AFFIDAVIT OF DISQUALIFICATION WAS
TIMELY; ON ITS FILING, JUDGE GOODMAN
SHOULD HAVE DISQUALIFIED HIMSELF.

(App. Op. Br. p. 51)

(Resp. Br., Point VI, pp. 26-28)

Respondent argues that appellant's affidavit of dis-
qualification was not timely. He cites 28 USC § 144 in
and then points out that the affidavit was not filed
1 December 29, 1955, which was 29 days, to quote re-
dent, "after petitioner was expressly informed that
e Goodman would handle the matter and approximately
days [actually 12 days] prior to the time then set
trial [but actually 18 days before the hearings got
rway]."

First. 28 USC § 138 provides that "The times for
ing terms of court shall be determined by rule of the
istrict court." And by rule the District Court for this
istrict has provided that "Terms of this Court shall be
at San Francisco commencing on the first Monday in
n, the second Monday in July and the first Monday in
ember of each year."

Thus, since the term during which appellant's habeas corpus hearing was held began on the first Monday in September, 1955 and did not end until early March, 1956, since the Supreme Court's mandate did not come down until November 28, 1955 (several days after the term had run), and since hearings were concluded and the decision rendered weeks before the term ended, appellant could not possibly have filed his affidavit "not less than ten days before the beginning of the term at which the proceeding [is] to be heard."

In this context, court terms are simply an irrelevant fiction, "and the difficulty with fictions is that those who are most apt to mislead are those who proclaim them." Justice Jackson in a separate opinion in Brown v. Board of Education, 344 U.S. 443, 542.)

Second. Appellant filed his affidavit at the earliest possible and practicable time. True, appellant learned Judge Goodman would be the hearing judge on November 1, 1955--and, through counsel, immediately objected in writing to the assignment (PTR. 2-6). On this same date, Judge Goodman flatly rejected counsel for appellant's suggestion he voluntarily disqualify himself and stated he then was not prejudiced (PTR. 7-13, 19-20).

Appellant accepted the refusal and the statement. What else could he do? To have filed an affidavit in the face of both would have been a futile act. It would,

her, have foreclosed appellant from seeking Judge
man's disqualification at some future date should it
ear the judge still entertained the bias appellant
ieved he had shown in the past, since the statute
mits "A party [to] file only one such affidavit as
any judge."

As soon as it became apparent to appellant that
ge Goodman still did entertain a personal, continuing
fixed bias and prejudice against him, and it further
eared that the facts of record were sufficient to
ablish that bias and prejudice as a matter of law,
ellant immediately prepared and filed his affidavit.
t he set out all the relevant facts. Therefore,
ondent's argument that the affidavit was not timely
a quibble.

Third. It is not, as respondent claims, "appellant's
ention that [without more] the judge against whom
affidavit of bias or prejudice is filed must permit
her judge to pass on the sufficiency of the affidavit."

It is appellant's contention, as demonstrated under
t VII-A just above and in the opening brief, that the
davit more than sufficiently showed as a matter of
the bias denounced by 28 USC § 144, and hence that,
andatorily required by law in such a situation, Judge
man should have proceeded no further, and another judge
ould have been assigned to hear the proceeding.

As noted, no counter-affidavit was filed; the facts not disputed. Respondent significantly does not agree with appellant's statement in the opening brief that "disqualification, further, would not have interfered with the regular hearing and disposition of the case."

The point is not academic or the prejudice suffered by appellant slight by the failure of Judge Goodman to disqualify himself. That failure deprived appellant of the most fundamental right demanded by our system of jurisprudence: the right of the litigant to have his case heard by an impartial judge. (In re Murchinson, 358 U.S. 133, 136.)

There is nothing to be found in Respondent's Brief
t dictates appellant should or must retreat from
position that, for those reasons specified and argued
his opening brief and here, this Honorable Court
uld reverse the order and judgment of the District
rt -- discharging the writ and remanding appellant to
today -- with appropriate directions either to dis-
rge appellant from custody, or to hold full and fair
rings on appellant's charges.

WHEREFORE, this alternative relief, as prayed for
pages 52-53 of Appellant's Opening Brief, should be
nted.

Dated: July 23, 1956.

Respectfully submitted,

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